



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 13457923

Date: SEP. 8, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner submits a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational

interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,² grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge, and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, the Petitioner has not sufficiently demonstrated the substantial merit and the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.⁴

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicates in the petition that he is currently employed by the [REDACTED] as an "Improvised Explosive Device Disposal (IEDD) officer," and asserts that he "wishes to employ his expertise to strengthen the homeland security of the United States."⁵ He also indicates that he is qualified to provide consulting services for "government aid or security services such as USAID, the Department of State's Bureau of Diplomatic Security and Bureau of Counterterrorism, or the Department of Homeland Security." Towards that end, he describes his prospective endeavor, in relevant part, as follows:

[The Petitioner] views the U.S. as the country where he can most effectively and productively employ his expertise in security management; improvised explosive device diffusion and disposal; civil engineering; intelligence; counterterrorism; military personnel training; procurement; project management; data analysis; human resource management; and staff supervision. . . . [He] is primed to work for the multiple governmental agencies that address the [IED diffusion] issue, including the U.S. Department, the Department of Defense, USAID, and the CDC.

The Director issued a request for evidence (RFE), asking for a detailed description of the Petitioner's proposed endeavor, and observed that while the evidence submitted with the petition discusses his professional experience and broadly describes his work in the security field, he did not adequately define the nature of his proposed endeavor. The Director also explained in the RFE that where the record regarding the first *Dhanasar* prong is vague, USCIS cannot meaningfully determine whether the proposed endeavor meets the first prong requirements. In response, the Petitioner submits a business plan which primarily focuses on a proposed residential real estate investment strategy,⁶ called [REDACTED] in which he proposes to:

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ While we may not discuss every document submitted, we have reviewed and considered each one.

⁵ We note that, while information about the nature of the Petitioner's proposed endeavor is necessary for us to determine whether he satisfies the *Dhanasar* framework, he need not have a job offer from a specific employer as he is applying for a waiver of the job offer requirement.

⁶ The Petitioner does not provide evidence or narrative explaining how securing investments to construct residential real estate aligns with his previously stated fields in which he would pursue his endeavor, e.g., counterterrorism and national security. The Petitioner must resolve this inconsistency and ambiguity in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Choose a specific area and buy land in the suburbs of say, [redacted] New York, meeting all requirements of housing and focusing the urban public facilities. [D]ivide the land into suitable shares in such a way that one share holder can own one flat. Shareholders will pay on installments so that they are not financially burdened. In this way [the] cost of project and construction on company will be reduced considerably.

The Petitioner also included a list of “probable business ideas” in an appendix to this business plan which outlines abbreviated endeavors that the Petitioner *might* prospectively engage in, such as the sale and exportation of security and engineering equipment from the United States to foreign countries, offering services for the controlled demolition of buildings and bridges, providing enhanced security services to U.S. businesses, establishing and operating a snow removal business, or offering investment services to American entrepreneurs who wish to invest in Bangladesh.

While the Petitioner put forth a wide variety of possible endeavors in which he *might* be involved, he did not provide a detailed explanation and documentation that would identify and describe the specific endeavor(s) that he would pursue as requested by the Director in his RFE. In denying the petition, the Director concluded that the Petitioner had not sufficiently identified his proposed endeavor, and therefore he did not satisfy *Dhanasar*’s first prong.⁷ We agree. Considering the totality of the evidence, including evidence submitted on appeal, the record does not substantiate the Petitioner’s specific endeavor(s) should this petition be approved.

The Petitioner initially presents a high-level listing of general areas in which he might assist in efforts to deter terrorism and promote the national security of the United States, (e.g., security management, counterterrorism, and improvised explosive device diffusion and disposal), which he may (or may not) focus on within his prospective endeavor. For example, he indicates that he *may* “support and provide consulting for government aid or security agencies, such as USAID and the U.S. Department of State’s Bureau of Diplomatic Security and Bureau of Counterterrorism, or for the Department of Homeland Security.” However, simply stating the Petitioner might provide support or consult with federal agencies is insufficient to illustrate the nature of his proposed endeavor, and that it will have substantial merit and national importance. He also states that he is already employed by the [redacted] which is an organization headquartered in [redacted], and as such he “is already employed with a [redacted] [redacted] employer with a substantial presence in the United States.” However, he does not discuss in sufficient detail *how* he would support the [redacted]’ mission through his proposed endeavor in the United States.

As discussed above, the Petitioner also alternatively asserts that he *may* engage in endeavors in diverse areas, such as building and bridge demolition, snow removal, or promoting U.S. investments in Bangladesh, the substance of which have not been adequately described in the record. Without more, the Petitioner has not established the specific nature of his proposed endeavor sufficient for us to determine that his work in the United States will have substantial merit and national importance. It is the Petitioner’s burden to prove by a preponderance of evidence that he is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be

⁷ “Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the [petition].” 8 C.F.R. § 103.2(b)(14).

determined not by the quantity of evidence alone but by its quality. *Id.* The Petitioner has not done so here.

On appeal, the Petitioner points to an opinion letter from Dr. M-, professor of political science at T-U-, who concludes that the Petitioner “satisfies the [*Dhanasar*] first prong, because his proposed employment is in a field (security) that is both of substantial intrinsic merit and national in scope.” The professor appears to conflate the eligibility requirements in the *Dhanasar* first prong, in part, with the framework put forth in *NYSDOT*, which USCIS previously utilized to evaluate national interest waiver petitions.⁸ Here, the Petitioner’s reliance on the professor’s conclusion that a petitioner may meet the first *Dhanasar* prong based solely on the substantial intrinsic merit and national scope of a particular field is misplaced.

The professor also discusses the expertise the Petitioner has gained through various security-related assignments while he was employed first by the Bangladesh [REDACTED], and later by the [REDACTED]. However, the Petitioner’s expertise acquired through his employment relates to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has substantial merit and national importance under *Dhanasar*’s first prong. Though the professor opines that the Petitioner’s “work combating terrorists is invaluable, his education impressive, and his promise for future accomplishment undeniable,” he does not sufficiently identify, analyze, or discuss the nature of the specific work the Petitioner will perform within his prospective endeavor in the United States.⁹

For these reasons, we conclude that the professor’s letter is not persuasive towards establishing the Petitioner’s eligibility under the first *Dhanasar* prong. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* For the sake of brevity, we will not address other deficiencies within the professor’s analyses.

On appeal, the Petitioner also asserts that “[i]t has been well-settled case law for over 30 years of enactment of Immact ’90 that no job offer is required in the EB-2/NIW category,” asserting that the Director erred in his decision and RFE by impermissibly imposing “evidence of future employment or endeavor.” However, while a job offer from a specific employer is not required in an EB-2 petition involving a national interest waiver request, in determining national importance in such cases, the relevant question is not the importance of the field, industry, or profession in which the individual will

⁸ The *NYSDOT* framework looked first to see if a petitioner has shown that the area of employment is of “substantial intrinsic merit.” *NYSDOT* at 217. Next, a petitioner had to establish that any proposed benefit from the individual’s endeavors will be “national in scope.” *Id.* As previously discussed, in announcing the *Dhanasar* framework, we vacated *NYSDOT*.

⁹ Similarly, the Petitioner has provided reference letters from former colleagues who outline his work accomplishments and put forth general statements that assert his services would be beneficial to the United States. While the letter writers hold the Petitioner in high regard, the submitted letters do not provide sufficient information regarding the specific endeavor(s) that the Petitioner will focus on should this petition be approved. The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters to determine whether they support the petitioner’s eligibility. See *1756, Inc. v. U.S. Att’y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990).

work; instead, we focus on the “the specific endeavor that the foreign national proposes to undertake.” *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* As discussed, the Petitioner has not established the specific nature of his proposed endeavor sufficient for us to determine that his work in the United States will have substantial merit and national importance.

Further, to evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. In *Dhanasar* we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. The Petition has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance.

The Petitioner has also not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact attributable to his future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner’s consulting projects would reach the level of “substantial positive economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

In summary, because the documentation in the record does not establish the substantial merit and national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.¹⁰

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

¹⁰ It is unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).